THE WALL STREET JOURNAL.
ONLINE
BOOM TOWN
By LEE GOMES
The Hot New Field of Cyberlaw
Is Just Hokum, Skeptics Argue
Is there really a cyberspace full of "cybercitizens" who need only be accountable to their own "cyberlaws"? A loose-knit group of law professors is bucking one of the big fads in the legal field by calling that whole idea "cybersilly."
Law involving the online world is hot right now. Law schools trying to stay current have courses in it, which tend to be popular with a generation of law students reared on Wired magazine and Napster. Experts in so-called cyberlaw typically have technology-friendly legal views, and are thus frequent guests at the tech world's many conferences. They're also quoted all the time in media accounts of online legal disputes.
There is, though, a much less well-known but equally determined group of legal experts -- let's call them the "cyberskeptics" -- who are deeply troubled by just about everything about this trend. The skeptics start by questioning the very existence of cyberspace, which they say is no more real than a "phone space" involving all the people on
Swindler. Fraud. Financial
WSJ.com Career Journal
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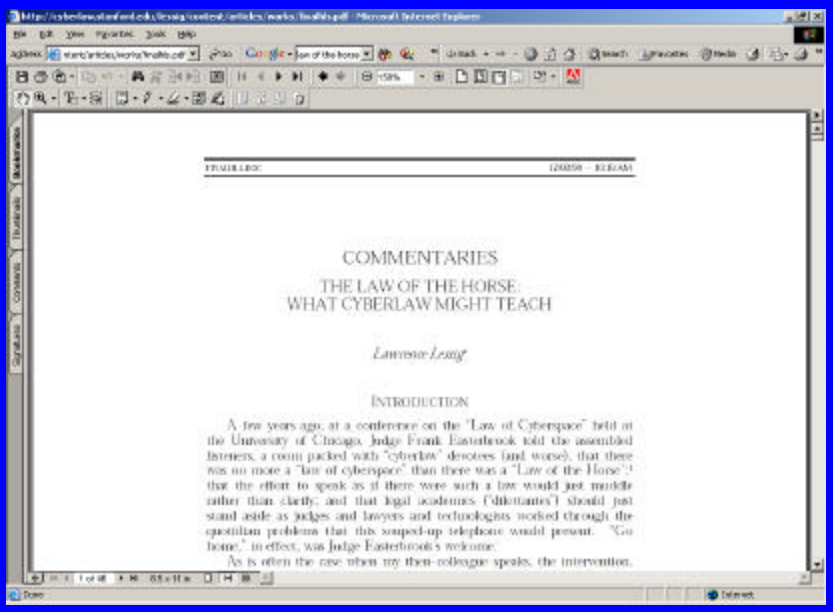


COMMENTARIES

THE LAW OF THE HORSE:
WHAT CYBERLAW MIGHT TEACH

*Lawrence Lessig*

INTRODUCTION

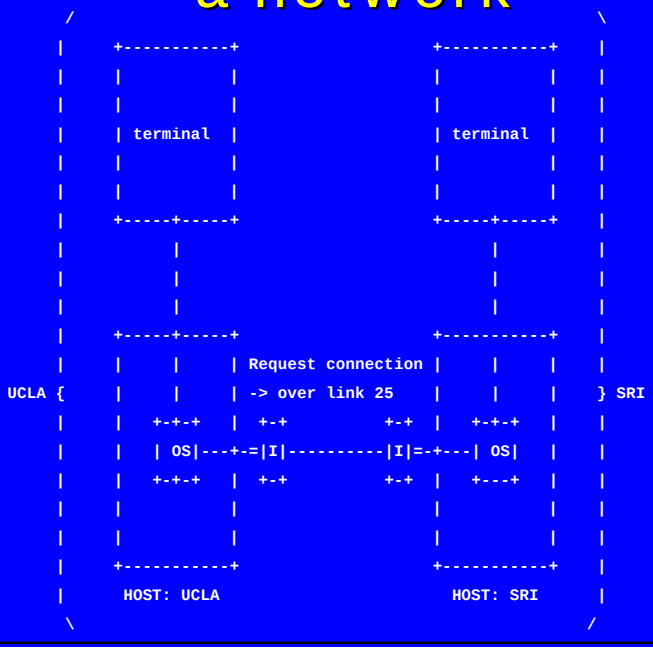
A few years ago, at a conference on the "Law of Cyberspace" held at the University of Chicago, Judge Frank Easterbrook told the assembled listeners, a room packed with "cyberlaw" denizens (and worse), that there was no more a "law of cyberspace" than there was a "Law of the Horse":[1] that the effort to speak as if there were such a law would just muddle rather than clarify; and that legal academics ("dilettantes") should just stand aside as judges and lawyers and technologists worked through the quotidian problems that this souped-up telephone would present. "Go home," in effect, was Judge Easterbrook's welcome.

As is often the case when my then-colleague speaks, the intervention,

# domain names, ICANN, and Internet governance

Jon Zittrain
iLaw 2002
Monday, July 1, 2002

# a network




# a namespace

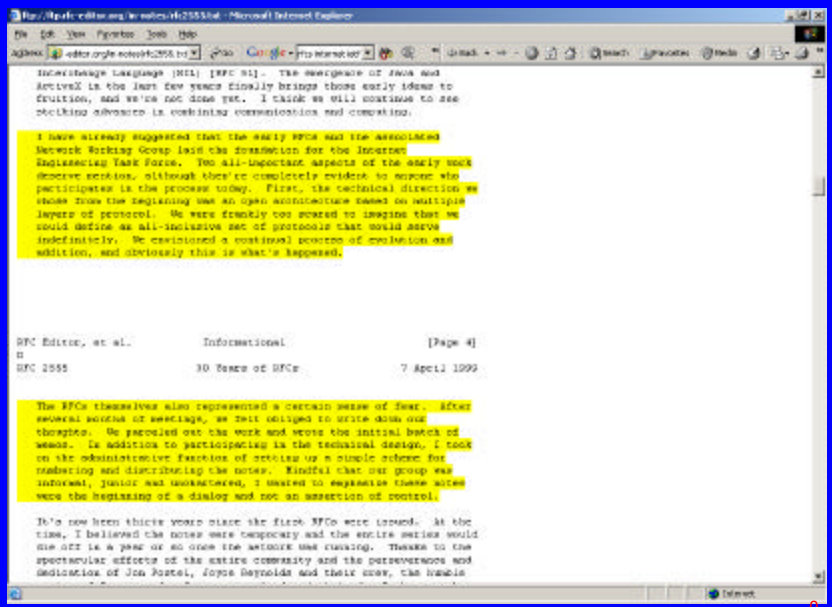
THE LIST

## Dave Clark, Senior Researcher, MIT LCS

"Well, it started out with twelve people in a room."

"So we decided we needed to split off a smaller advisory group and then a larger ... [one], and the advisory group has changed its name four times. It's a deliberate strategy. If you want to hire a committee such that people don't find you and ask if they can join, the one thing you can do is rename it every two years so they can't find you. So we used to call it the Internet Configuration Control Board. We made that term up to make it sound as uninteresting and boring as possible so we could go meet in private without anybody noticing us. Then we called it the Internet Advisory Board, and then we had to change that because the government passed the Sunshine Law."

Oct. 1, 1997, HLS



RFC Editor, et al. Informational [Page 4]

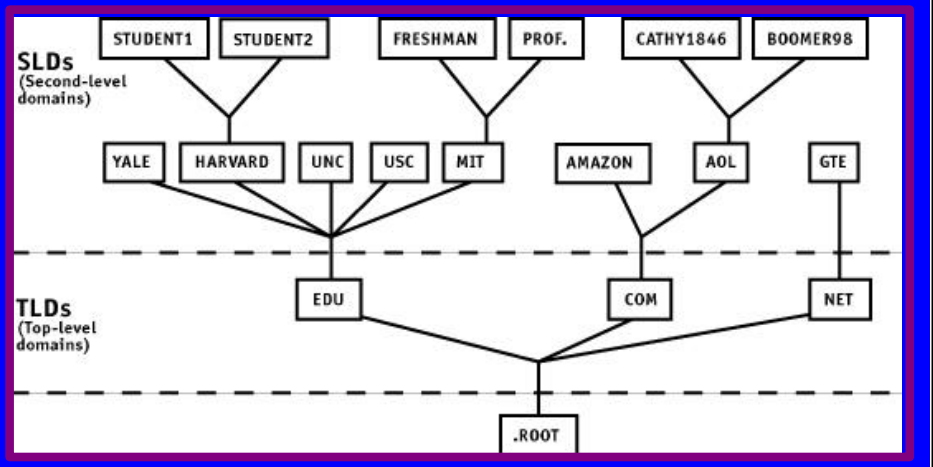
RFC 2555 30 Years of RFCs 7 April 1999

The RFCs themselves also represented a certain sense of fear. After several months of meetings, we felt obliged to write down our thoughts. We parceled out the work and wrote the initial batch of memos. In addition to participating in the technical design, I took on the administrative function of setting up a simple scheme for numbering and distributing the notes. Mindful that our group was informal, junior and unchartered, I wanted to emphasize these notes were the beginning of a dialog and not an assertion of control.

It's now been thirty years since the first RFCs were issued. At the time, I believed the notes were temporary and the entire series would die off in a year or so once the network was running. Thanks to the spectacular efforts of the entire community and the perseverance and dedication of Jon Postel, Joyce Reynolds and their crew, the humble

0 1 2

# New and improved DNS (1984)




# Jon Postel
# IANA

# 1993

the job gets too hard

.per

## Problems

.xxx

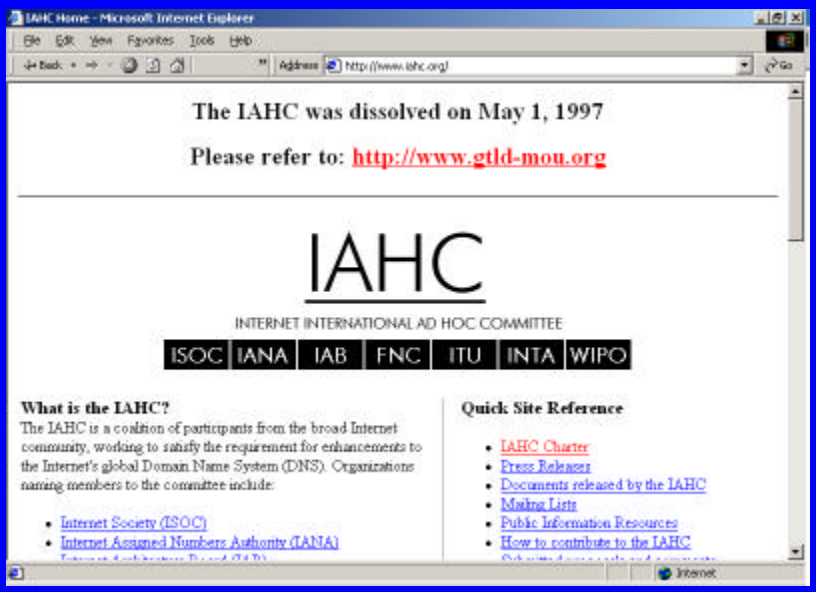
- NSI is a cash cow. Other entrepreneurs want a piece of the action.
- Corporate America, World discover “cybersquatting.”
- Expand the namespace?

.arte

.web

# Solution

- Jon thinks hard, adds the names
- Jon thinks hard, does an RFC, adds the names
- Jon convenes a committee



# The IAHC

The DNS is an international resource and the IAHC will at all times operate with that perspective. The IAHC specification effort will address legal, administrative, technical and operational concerns, with particular attention to the questions of fairness and functional stability. The IAHC will attempt to define procedures which are as simple, fair and direct as possible, resolving the minimum required issues. In order to provide timely results, the IAHC will focus initally on the issues of highest priority.

**GOALS AND MILESTONES**

| | |
|---|---|
| Nov 11, 96 | Publish IAHC charter & press release<br>Solicit near-term iTLD policy & procedure proposals |
| Dec 19, 96 | IAHC selected proposal available for public review |
| Jan 1, 97 | Last day to submit reviews of proposal |
| Jan 15, 97 | Near-term iTLD Policies & Procedures published<br>Implementation group formed for reviews and awards |
| Feb 10, 97 | Deadline for applications according to new policiesand procedures |
| Mar 1, 97 | Initial awards according to new policies and procedures |

# The gTLD-MoU

gTLD-MoU - 28. Februar 1997

**FESTLEGUNG EINES MEMORANDUMS OF UNDERSTANDING ÜBER**

**DEN GENERISCHEN TOP-LEVEL-DOMAINNAMENSRAUM DES**

**INTERNET-DOMAINNAMENSYSTEMS (*gTLD-MoU*)**

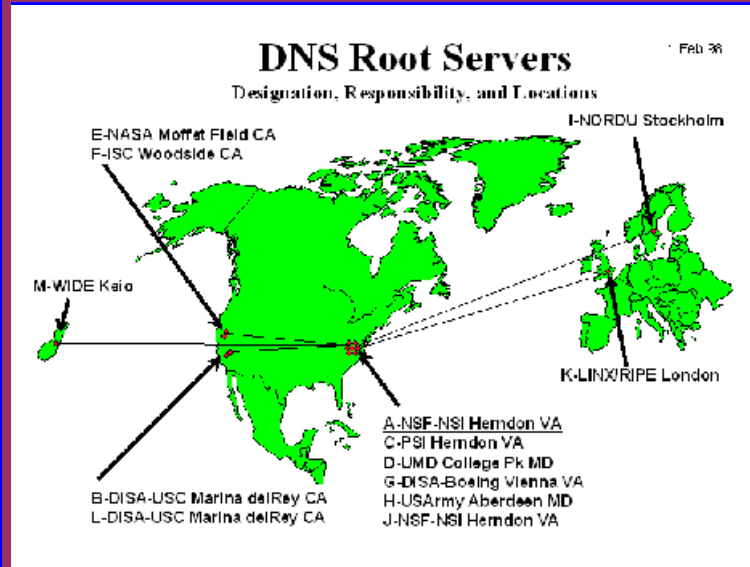
**Die Internet-Gemeinschaft (1997),**

**in der Erwägung,**

**daß das Internet-Domainnamensystem (*DNS*) für Suchmaschinen im Internet durch Aufteilung zwischen Namen, die der menschlichen Merkfähigkeit angepaßt sind, und den dazugehörigen darunterliegenden IP-Adressen**

# a constitutional crisis

# The Root




# Enter the U.S. Government

**UNITED STATES DEPARTMENT OF COMMERCE**

**Management of Internet Names and Addresses**

**Docket Number: 980212036-8146-02**

**AGENCY:** National Telecommunications and Information Administration

**ACTION:** Statement of Policy

**SUMMARY:** On July 1, 1997, as part of the Clinton Administration's *Framework for Global Electronic Commerce*,[1] the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request Request for Comments (RFC) on DNS administration. The RFC solicited public input on issues relating to the overall framework of the DNS administration, the

# IFWP v. IANA

**What is the International Forum for the White Paper?**

The IFWP is an ad hoc coalition of professional, trade and educational associations representing a diversity of Internet stakeholder groups, including ISPs, content developers, trademark holders, networkers, intergovernmental groups, policy experts, end-users and others. This coalition has come together to sponsor a framework of coordinated international meetings, to be held around the world, at which stakeholders will discuss the transition to private sector management of the technical administration of Internet names and numbers as outlined in the policy "White Paper" recently released by the United States Government. These international meetings are open to all Internet stakeholders, who are encouraged to support this on-going process.

## Problems - responses

.kids

.museum

- NSI is a cash cow. Other entrepreneurs want a piece of the action.
  - US DoC negotiates Rr/Ry distinction for .com, .net, .org;
  - baton passed, in slow motion, to ICANN to oversee agreements – and the root
- Corporate America, World discover "cybersquatting."
  - the UDRP
- Expand the namespace?
  - more open ccTLDs; new gTLDs

.info

.web

.biz

.name


## Problems - responses

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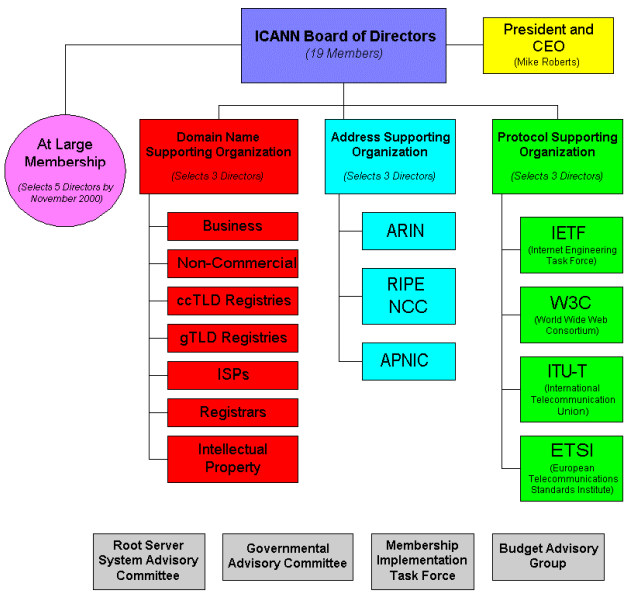
"Governance"

# “Governance”

## ICANN Organizational Chart

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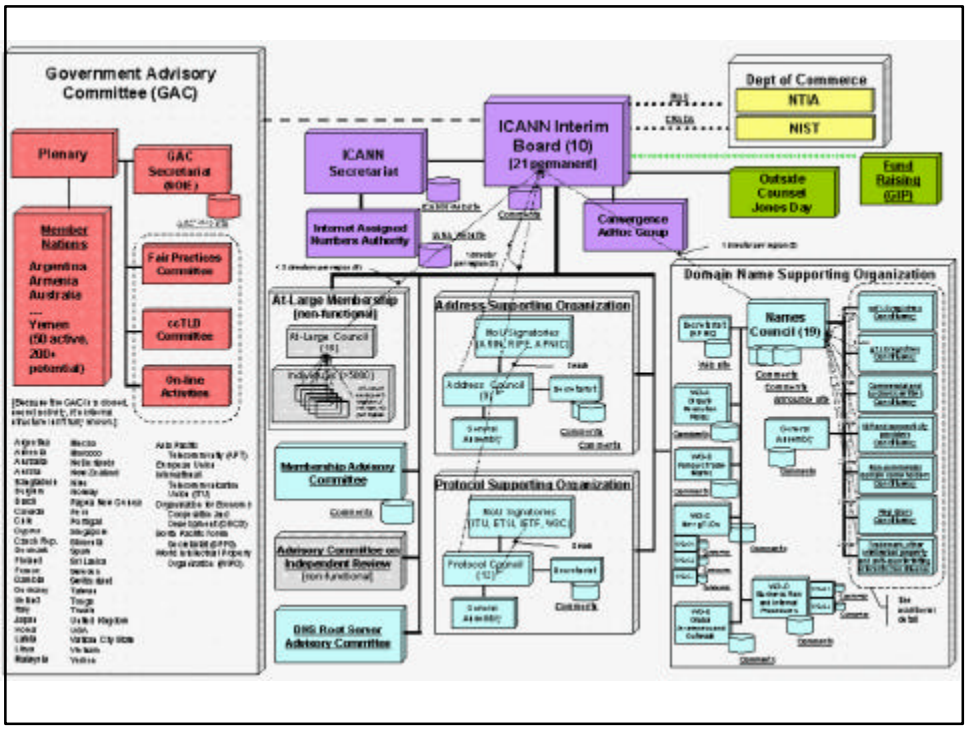
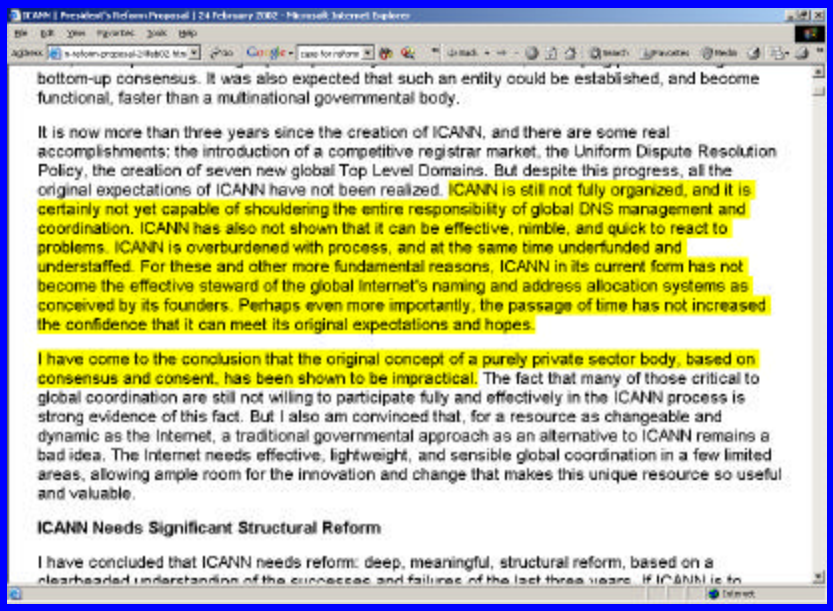



# questions

- what's really at stake here?
  - is what ICANN's charged with doing really "governance"?
  - do we need "internet governance" for anything?
- if ICANN governs us, how to govern ICANN?
  - if you think the whole thing is inherently and irrevocably ill-conceived, what alternatives do you suggest?



bottom-up consensus. It was also expected that such an entity could be established, and become functional, faster than a multinational governmental body.

It is now more than three years since the creation of ICANN, and there are some real accomplishments: the introduction of a competitive registrar market, the Uniform Dispute Resolution Policy, the creation of seven new global Top Level Domains. But despite this progress, all the original expectations of ICANN have not been realized. ICANN is still not fully organized, and it is certainly not yet capable of shouldering the entire responsibility of global DNS management and coordination. ICANN has also not shown that it can be effective, nimble, and quick to react to problems. ICANN is overburdened with process, and at the same time underfunded and understaffed. For these and other more fundamental reasons, ICANN in its current form has not become the effective steward of the global Internet's naming and address allocation systems as conceived by its founders. Perhaps even more importantly, the passage of time has not increased the confidence that it can meet its original expectations and hopes.

I have come to the conclusion that the original concept of a purely private sector body, based on consensus and consent, has been shown to be impractical. The fact that many of those critical to global coordination are still not willing to participate fully and effectively in the ICANN process is strong evidence of this fact. But I also am convinced that, for a resource as changeable and dynamic as the Internet, a traditional governmental approach as an alternative to ICANN remains a bad idea. The Internet needs effective, lightweight, and sensible global coordination in a few limited areas, allowing ample room for the innovation and change that makes this unique resource so useful and valuable.

**ICANN Needs Significant Structural Reform**

I have concluded that ICANN needs reform: deep, meaningful, structural reform, based on a

THE GLOBE AND MAIL

globeandmail.com

POSTED AT 12:02 PM EDT Friday, June 28

**ICANN leaves ordinary surfers high and dry**

Reuters News Agency

Bucharest — The group that oversees the Internet's names system voted on Friday to exclude ordinary Web surfers from its board in a move which critics say allows mainstream interests to tighten their grip on the on-line world.

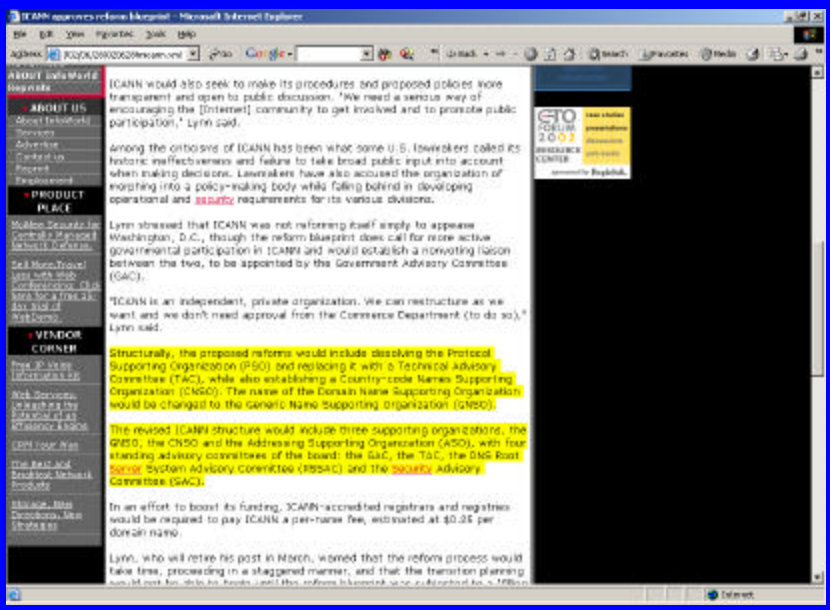
ICANN, or the Internet Corporation for Assigned Names and Numbers, unanimously passed the resolution at its quarterly meeting, closing one of the most controversial issues in the development of the four-year-old organization.

Under a radical new system, the on-line election of individual Internet users to the group's executive board has been abolished.

Instead, the 19-member board of directors will be drawn from representatives of technical, business, government and non-profit organizations. It will have ultimate say over future policy matters that govern the fundamental domain name system for the Internet.

ICANN, a non-profit group, oversees the process of doling out domain names with suffixes such as .com to businesses and individuals.

Its chief executive officer, Stuart Lynn, said the vote was an important step for the global body as it would



ICANN would also seek to make its procedures and proposed policies more transparent and open to public discussion. "We need a serious way of encouraging the [Internet] community to get involved and to promote public participation," Lynn said.

Among the criticisms of ICANN has been what some U.S. lawmakers called its historic ineffectiveness and failure to take broad public input into account when making decisions. Lawmakers have also accused the organization of morphing into a policy-making body while falling behind in developing operational and security requirements for its various divisions.

Lynn stressed that ICANN was not reforming itself simply to appease Washington, D.C., though the reform blueprint does call for more active governmental participation in ICANN and would establish a nonvoting liaison between the two, to be appointed by the Government Advisory Committee (GAC).

"ICANN is an independent, private organization. We can restructure as we want and we don't need approval from the Commerce Department (to do so)," Lynn said.

Structurally, the proposed reforms would include dissolving the Protocol Supporting Organization (PSO) and replacing it with a Technical Advisory Committee (TAC), while also establishing a Country-code Names Supporting Organization (CNSO). The name of the Domain Name Supporting Organization would be changed to the Generic Name Supporting Organization (GNSO).

The revised ICANN structure would include three supporting organizations, the GNSO, the CNSO and the Addressing Supporting Organization (ASO), with four standing advisory committees of the board: the GAC, the TAC, the DNS Root Server System Advisory Committee (RSSAC) and the Security Advisory Committee (SAC).

In an effort to boost its funding, ICANN-accredited registrars and registries would be required to pay ICANN a per-name fee, estimated at $0.25 per domain name.

Lynn, who will retire his post in March, warned that the reform process would take time, proceeding in a staggered manner, and that the transition planning